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BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Application Number: 10/620,797
Filing Date: July 17, 2003
Appellant(s): CHINNER ET AL.

Richard A. Gollhofer
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 01/15/2008 appealing from the Office action mailed 05/15/2007.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The Examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The Appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The Appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

US 6,971,101	Clayton et al.	**Filed:**	09-12-2000	**Published:**	11-29-2005
US 6,092,048	Nakaoka et al.	**Filed:**	11-04-1997	**Published:**	07-18-2000

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims Rejections – 35 U.S.C. 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

2. Claims 1-28 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Number 6,971,101 issued to Mark Clayton et al. (hereinafter "Clayton") and further in view of U.S. Patent Number 6,092,048 issued to Masaki Nakaoka et al. (hereinafter "Nakaoka").

Claims 1, 11, and 20:

Clayton teaches at least one computer readable medium storing at least one program embodying a method of processing requests to access computing resources *(Clayton: see Fig. 1, all features)*, said method comprising:

scheduling execution of the resource acquisition requests *(Clayton: column 3, lines 49-61)*.

Clayton discloses a scheduling execution of the resource acquisition request as stated above.

However, Clayton does not disclose in accordance with a user configurable metering.

On the other hand, Nakaoka discloses a user configurable metering *(Nakaoka: see abstract, wherein each of a plurality of client machines includes a task information display/operation unit, which enables each user to operate information during a task, is executed. A task execution support system supports the user such that*

the user can execute a task while determining the contents of action and the procedure of action in accordance with a progress of a task without defining a series of action procedure from the start to end of a task with all sorts of actions in the task listed-up as a network type flow before a task to be supported is started, Fig. 25, all features, further defined in column 8, lines 37-65, wherein defined in the applicant's remarks on page 7, the "user configurable metering" would be the ability of a user to configure how the focus manager determines the number of request of a given priority should be executed).

It would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate a user configurable metering disclosed by Nakaoka within the Clayton system for a faster execution, and efficiency for processing numerous amounts of request that may be made by a user.

Claims 2, 12, and 21:

The combination of Clayton and Nakaoka discloses all the elements of claims 1, 11, and 20, as noted above, and Nakaoka further discloses a method further comprising sorting the resource acquisition requests into at least two separate queues for different request types *(Nakaoka: Figure 7, all features further defined in column 10, lines 45-59, wherein the field 7020 shows a code indicative of* ***type of task*** *object operation which represents the time that the event condition wants to indicate and wherein field 7030 shows a task ID to which there belongs an operation target task object of a task object operation expressing the time that the event condition wants to indicate and field 7040 shows a title of an operation target task object of a task object operation which expresses the time that the event condition wants to indicate and when the task object operation indicates the completion of the task, the field 7030 shows the task object which is to be completed, and the field 7040 is not significant, and wherein paragraph [0006] of applicants specification on page 8 of applicants remarks, the resource acquisition requests may be* ***sorted*** *by read, write and metadata requests and, and by different*

subtypes within these types, e.g., within read requests by whether a read-ahead operation should be performed, or whether a write contains data or only a synchronization request that sorted by type; column 5, lines 49-67, Figure 8, wherein the event types are defined; column 6, lines 17-20, wherein client creates new task entries n order to write respective chapters; column 8, lines 4-12, wherein he task information management unit 1020 is adapted to read task information from the task information memory unit 1010 and to change memorized task information in accordance with a task information reference/operation request issued from the task information display/operation unit 1030 or the event rule driver unit 1040.).

Claims 3, 13, and 22:

The combination of Clayton and Nakaoka discloses all the elements of claims 2, 12, and 21 as noted above, and Nakaoka further discloses a method further comprising configuring metering of the resource acquisition requests in response to input from an administrator of the system *(Nakaoka: column 4, lines 27-35 and column 14, lines 30-35, wherein the user designates an execution action, which is equivalent to a user control over how all request are executed as defined on page 8, of applicants remarks).*

Claims 4, 14, and 23:

The combination of Clayton and Nakaoka discloses all the elements of claims 3, 13, and 22, as noted above, and the combination of Clayton and Nakaoka further discloses wherein said configuring includes specifying a first number *(Clayton: column 5, lines 49-51)* of the resource acquisition requests from a first queue to be performed *(Clayton: column 6, lines 13-15)* for a second number *(Clayton: column 5, lines 51-53)* of the resource acquisition requests from a second queue *(Clayton: column 6, lines 15-17)*, as long as the resource acquisition requests are queued in both the first and second queues *(Nakaoma: Figure 24, all features, further defined in column 20, lines 19-44).*

Claims 5, 15, and 24:

The combination of Clayton and Nakaoka discloses all the elements of claims 4, 14, and 23, as noted above, and Clayton further discloses wherein said configuring includes specifying a corresponding number of the resource acquisition requests to be executed for each of the at least two separate queues *(Clayton: column 6, lines 10-13)* when more than two of the separate queues are provided *(Clayton: column 6, lines 1-10)*.

Claims 6, 16, and 25:

The combination of Clayton and Nakaoka discloses all the elements of claims 4, 14, and 23, as noted above, and Clayton further discloses a method further comprising establishing a maximum number of threads *(Clayton: column 1, lines 55-67, wherein a thread is defined as a process that is part of a large process or program)* for executing resource acquisition requests in response to the input from the administrator *(Clayton: column 7, lines 47-56)*.

Claims 7, 17, and 26:

The combination of Clayton and Nakaoka discloses all the elements of claims 6, 16, and 25, as noted above, and Clayton further discloses wherein the maximum number of threads for executing resource acquisition requests is at least as large as a sum of the first and second numbers *(Clayton: columns 7-8, lines 61-67 and lines 1-13, wherein a five minute difference between time and implementation time)*.

Claims 8, 18, and 27:

The combination of Clayton and Nakaoka discloses all the elements of claims 7, 17, and 26, as noted above, and Clayton further discloses wherein the first and second numbers are each larger than one *(Clayton: column 5, lines 13-15, wherein there is a zero, first, and second priority)*.

Claims 9, 19, and 28:

The combination of Clayton and Nakaoka discloses all the elements of claims 8, 18, and 27, as noted above, and Clayton further discloses wherein a default metering is used when no input is received from the administrator *(Clayton: column 8, lines 21-39, wherein attempt is made to take over the user interface and only allows when an acknowledgement is made).*

Claim 10:

The combination of Clayton and Nakaoka discloses all the elements of claim 9, as noted above, and Clayton further discloses wherein the first queue is for read requests, the second queue is for write requests and the default metering is two read requests for two write requests *(Clayton: column 2, lines 17-34, wherein an open network is able to read requests and write requests and column 4, lines 53-59)* executed by four threads *(Clayton: see Figure 1, all features, wherein threads is defined as a process that is part of a large process or program).*

(10) Response to Argument

Examiner Notes:

It is brought to the Appellant's attention that normally arguments are submitted under the heading "Remarks" **pointing out disagreements with the examiner's contentions)**. In addition, the Appellant must also discuss the references applied against the claims, explaining how the claims avoid the references or distinguish from them.

It was difficult for the Examiner to interpret where the Appellant's actual arguments began because the initial section of text that follows the heading "**Arguments**" does not appear to distinctly identify what the prior art did not disclose, did not describe, or did not suggest. In order for an examiner to reply accurately to Appellant's arguments they must be clearly

presented. For example, a visible argument would be: The prior art of record Nakaoka **did not teach or disclose** a user configurable metering. This is a clear argument.

Therefore, the Examiner has replied to all of Appellant's arguments using his best judgment.

Applicant Argues: Variations in Definitions Provided by Claims 1, 11 and 21:

It is submitted that the "tasks" in Nakaoka are not equivalent to "resource acquisition requests" as that term is used in the subject application. *(emphasis added by Examiner)* A task in Nakaoka is a well-defined set of operations that a set of workers carry out, and the closest equivalent to "user configurable metering" that can be found in Nakaoka seems to relate to the manager of the task assigning operations to workers. This is not equivalent to "user configurable metering" of "resource acquisition requests" as those terms are defined in the subject application. The "resource acquisition requests" are described as being "stored in one or more queues upon receipt while they await execution by a process that controls access to...[a computer] filesystem" (see, paragraph [0004]). Even if the Patent and Trademark Office refuses to define "resource acquisition requests" in claim 1 consistently with the specification, claim 11 provides a definition in the preamble, "processing requests to access computing resources" and the body of claim 20 requires a "processor programmed to schedule execution of the resource acquisition requests." Therefore, claims 11 and 20 require on their face a different meaning of "resource acquisition requests" than what is disclosed or suggested in Nakaoka.

Examiner Responds:

Examiner is not persuaded. Although claims of issued patents are interpreted in light of the specification, prosecution history, prior art and other claims, this is not the mode of claim interpretation to be applied during examination. During examination, the claims must be interpreted as broadly as their terms reasonably allow. *In re American Academy of Science Tech Center*, 367 F.3d 1359, 1369, 70 USPQ2d 1827, 1834 (Fed. Cir. 2004).

A resource acquisition is interpreted to be "the act of requiring a resource." Since it appears that the tasks of Nakaoka include "the act of requiring a resource" for the task to be carried out, it appears that the tasks of Nakaoka are equivalent to a "resource acquisition request."

Applicant Argues: Lack of Motivation to Combine:

Furthermore, it is submitted that the assertion at page 14, lines 1-6 of the May 15, 2007 Office Action that column 12, lines 4-7 of Nakaoka provides motivation "for establishing an improved method of improving the efficiency of the system by enhancing the query performance by utilizing an administrator to delegate and operate resources" is clearly an application of hindsight. The Examiner has not cited anything in the prior art that suggests anything to connect the teachings of Clayton et al. and Nakaoka or that would lead one of ordinary skill in the art to modify what is taught in Clayton et al. based on Nakaoka to meet the limitations recited in the claims. It is submitted that these references are related to such completely different ways of performing tasks that anyone would only consider them together after conducting a word search of U.S. patents based on reading the subject application.

Examiner Responds:

Examiner is not persuaded. In response to Appellant's argument that the Examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See In re McLaughlin, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

Even further, it appears that the Appellant is arguing that there exists no motivation to combine the cited prior art references in the references themselves. In response to Appellant's Arguments that there is no suggestion, teaching, or motivation in the references to combine the prior art, the Examiner respectfully points out that *KSR International Co. v. Teleflex Inc.* forecloses the argument that a specific teaching, suggestion, or motivation is required to support a finding of obviousness. Also see the recent Board decision Ex parte Smith, --USPQ2d--, slip op. at 20, (Bd. Pat. App & Interf. June 25, 2007) (citing KSR, 82 USPQ2d at 1396)(available at http://www.uspto.gov/web/offices/dcom/bpai/prec/fd071925.pdf).

In the instant application, Clayton did not disclose in accordance with a user configurable metering. but, Nakaoka discloses a user configurable metering (Nakaoka: abstract). Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate a user configurable metering disclosed by Nakaoka within the Clayton system for a faster execution, and efficiency for processing numerous amounts of request that may be made by a user.

Since it appears that sufficient motivation exists to combine the prior art references, the claims remain rejected under 35 U.S.C. 103(a).

Applicant Argument on Dependent Claims 2-10, 12-19 and 21-28:

In rejecting claims 2, 12 and 21, Figs. 7 and 8 and portions of columns 5, 6, 8 and 10 of Nakaoka were cited. **The addition of these portions of the disclosure in Nakaoka does not provide any suggestion for combining Nakaoka and Clayton et al. Figure 7 is described as "an event condition table" (column 6, line 61) and indicates that tasks are targets of events which have various types and may be associated with a title of a target object**. *(emphasis added by Examiner)* The portion of the description of Fig. 7 cited at column 10, lines 45-59 states that the fields in the first column are identifiers, and the fields in the remaining three columns either represent or express "the time that the event condition wants to indicate" (e.g., column 10, lines 50-51). As noted above and in the February 28, 2007 Response and the July 10, 2006 Amendment, one aspect of the invention missing from Clayton et al. is providing a way for a user to configure how the focus manager determines the number of requests of a given priority should be executed. It is submitted that something which expresses or represents "the time that the event condition wants to indicate" does not teach or suggest what is missing from Clayton et al. **Furthermore, it is submitted that Fig. 7 and column 10, lines 45-59 of Nakaoka do not contain any suggestion of sorting "the resource acquisition requests into at least two separate queues" as recited in claims 2, 12, and 21**. *(emphasis added by Examiner)* The fact that the sorting in claims 2, 12, and 21 is performed based on "different request types" is hardly suggested by the listing of event types in an event condition table.

The paragraph spanning pages 16 and 17 and the only full paragraph on page 17 of May 15, 2007 Office Action were apparently in response to the arguments in the preceding paragraph. It is submitted that the repeated citation of Fig. 7 and column 10, lines 45-59 of Nakaoka in the paragraph spanning pages 16 and 17 of the May 15, 2007 Office Action does not overcome the arguments provided above and in the February 28, 2007 Response that there is no disclosure by Nakaoka of "resource acquisition requests" as defined by claims 11 and 20 (and the specification for claim 1). Rather, what is disclosed by Nakaoka are "tasks" performed by people and what the Examiner is relying on as "types" of requests is defined in Nakaoka as "representing the time that the event condition wants to indicate" (column 10, lines 50-51). That is not equivalent to a type of resource acquisition request as defined in the claims and specification of this application.

At page 17, lines 3-5, the May 15, 2007 Office Action noted that the Summary of the Invention section of Nakaoka states, the "task can be hierarchized by the main task and subtask structure based on an object among the tasks" (column 6, lines 40-41). However, that does not suggest, "sorting the resource acquisition requests into at

least two separate queues for different request types" as recited in claims 2, 11 and 21, because nothing has been cited in the prior art suggesting to one of ordinary skill in the art that "main task and subtask structure" is equivalent to "different request types."

For all of the above reasons, it is submitted that claim 2, 12 and 21, as well as claims 3-10, 13-19 and 22-28 which depend therefrom, further patentably distinguish over Clayton et al. in view of Nakaoka.

Examiner Responds:

As it relates to Appellant's argument that the addition of these portions of the disclosure in "Nakaoka does not provide any suggestion for combining Nakaoka and Clayton et al.".

It appears that the Appellant is arguing that there exists no motivation to combine the cited prior art references in the references themselves. In response to Appellannt's Arguments that there is no suggestion, teaching, or motivation in the references to combine the prior art, the Examiner respectfully points out that *KSR International Co. v. Teleflex Inc.* forecloses the argument that a specific teaching, suggestion, or motivation is required to support a finding of obviousness. Also see the recent Board decision Ex parte Smith, --USPQ2d--, slip op. at 20, (Bd. Pat. App & Interf. June 25, 2007) (citing KSR, 82 USPQ2d at 1396)(available at http://www.uspto.gov/web/offices/dcom/bpai/prec/fd071925.pdf).

According to Appellant's argument "that **it is** submitted that Fig. 7 and column 10, lines 45-59 of Nakaoka do not contain any suggestion of sorting "the resource acquisition requests into at least two sepearate queues" as recited in claims 2, 12 and 21."

Examiner is not persuaded. It is indicated in Appellant's specification paragraph [0006], the resource acquisition request may be sorted by read, write, and metadata request and by different subtypes within these types, e.g., within read request by whether a read-ahead operation should be performed, or whether a write contains data or only a synchronization

request that sorted by type which is interpreted to be equivalent to the prior art of record Nakaoka – column 10, lines 45-59, wherein the field 7020 shows a code indicative of type of task object operation which represents the time that the event condition wants to indicate and wherein field 7030 shows a task ID to which there belongs an operation target task object of a task object operation expressing the time that the event condition wants to indicate and field 7040 shows a title of an operation target task object of a task object operation which expresses the time that the event condition wants to indicate and when the task object operation indicates the completion of the task, the field 7030 shows the task object is to be completed, and the field 7040 is not significant, which corresponds to Appellant's specification.

Applicant Arguments on Un-rebutted Argument:

At page 18, lines 2-8, the May 15, 2007 Office Action apparently acknowledged that some of the arguments in the February 28, 2007 Response were not addressed. Following are arguments from the February 28, 2007 Response for which no response could be found in the May 15, 2007 Office Action. It is submitted that these arguments "clearly specify what...the...'prior art does not teach or suggest" (May 15, 2007 Office Action, page 18, lines 5-6) and do not constitute "blanket statements" (May 15, 2007 Office Action, page 18, line 8). The Board of Patent Appeals and Interferences is respectfully requested to consider the following arguments for which the Examiner has provided no response.

Figure 8 and column 5, lines 49-67 of Nakaoka were apparently cited in rejecting claims 2, 12 and 21 to show how the event types are defined. However, the list of event types in Fig. 8 do not seem to have anything to do with either "resource acquisition requests" as recited in claims 2, 12 and 21 or the focus manager 206 in Clayton et al. which the Examiner has acknowledged needs to be modified to meet the limitations in claims 1, 11 and 20. While column 5 of Nakaoka does mention "the task is classified based on the task definition, according to the method of classifying the task based on the object information" (column 5, lines 57-60), no suggestion has been found that tasks can be equated with "resource acquisition requests" or that the classification described in Nakaoka constitutes sorting based on "different request types" as recited in claims 2, 12 and 21.

The same lack of suggestion to modify the focus manager 206 in Clayton et al. or sort resource acquisition requests, is provided by the description of creating "new task entries...to write respective chapters" (Office Action, page 4, lines 15-16) which apparently is what was considered relevant in column 6, lines 17-20 of Nakaoka and by reading "task information...to change memorized task information in accordance with a task information reference/operation request issued from the task information display/operation unit 1030 or the event rule driver unit 1040" (Office Action, page 4, lines 17-20) which apparently is what was considered relevant in column 8, lines 4-12 of Nakaoka.

The wording of the rejection of the remaining claims, 3-10, 13-19 and 22-28, was unchanged from the

January 11, 2006 Office Action, except for the addition of the words "in view of Nakaoka" in regard to all of the rejections, except the rejection of claims 5, 15 and 24. It is submitted that the additional distinctions over the prior art due to the lack of equivalence between the present invention and Clayton et al. discussed in the July 11, 2006 Amendment also apply to the rejections based on Clayton et al. and Nakaoka.

Examiner Responds:

Examiner is not persuaded. After reviewing the Appellant's statements above, it is important to note that the Examiner does not see anywhere in the Appellant's statements ABOVE, where the arguments from the Appellant concerning the prior art of record are clearly conveyed to the Examiner. The statements provided by the Appellant above do not directly identify where the prior art of record does not teach, does not disclose, or does not describe a specific claim limitation.

However, in response to Appellant's statement that "Fig. 8 does not seem to have anything to do with either "resource acquisition requests" as recited in claims 2, 12 and 21, the Examiner is not persuaded.

Claims 2, 12, and 21 recite "sorting the resource acquisition request into at least two separate queues for different request types", in which the combination of Nakaoka in view of Clayton teaches the above claim limitation. For instance, Figure 8 illustrates types of task object operations, which is in accordance with Figure 9, which illustrates task conditions which is expressed by a task, which is interpreted to be equivalent to a resource acquisition. A resource acquisition is interpreted to be "the act of requiring a resource." It is indicated within Appellant's specification [0006], the resource acquisition request may be sorted by read, write, and metadata request and by different subtypes within these types, e.g., within read request by whether a read-ahead operation should be performed, or whether a write contains data or only

a synchronization request that sorted by type which corresponds to Nakaoka - column 10, lines 45-59, wherein the filed 7020 shows a code indicative of type of task object operation which represents the time that the event condition wants to indicate and wherein field 7030 shows a task ID to which there belongs an operation target task object of a task object operation expressing the time that the event condition wants to indicate and field 7040 shows a title of an operation target task object of a task object operation which expresses the time that the event condition wants to indicate and when the task object operation indicates the completion of the task, the field 7030 shows the task object which is to be completed, and the field 7040 is not significant.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the Examiner in the Related Appeals and Interferences section of this Examiner's Answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Patrick A. Darno/

Examiner

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